HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. S/S No. 2215/2001
(Old No. 39230/2000)

Bindrawati
W/o Late Phoolchand
Vs.
Vice Chancellor
G.B. Pant Nagar & others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 27.3.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2215 (SS) OF 2001
(Old No. 39230/2000)

Bindrawati,
W/o late Phoolchand,
R/o Bishunpur @ Mahdeya,
Pargana Mahuleepurab,
Tehsil- Khaleelabad,
District-Basti. .....Petitioner.

Versus

1. Vice Chancellore G.B. Pant Nagar University, Udham Singh Nagar.
2. Registrar G.B. Pant Nagar University, Udham Singh Nagar.
3. Establishment Officer, G.B. Pant Nagar University. Udham Singh Nagar. .....Respondents.

Dated: 27.03.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Manoj Tiwari, Advocate for the petitioner and Sri Rajendra Dobhal, Advocate for the respondents no. 1 to 3

By the present writ petition, the petitioner has prayed for a writ of mandamus commanding the respondents to provide job to the petitioner under the Dying in Harness Rules.

Briefly stated, the petitioner was working as Pump Operator in the university since 1975 with the respondents Department. He was confirmed on 27.12.1995 on the post of Pump Operator. He died on 05.07.1996 while in service. After the death of her husband, the petitioner moved an application

for appointment under Dying in Harness on compassionate ground. Respondents authorities required a certificate from the petitioner approved by District Magistrate stating that she is legal heir of late Phool Chand. The petitioner submitted the certificate. The petitioner belongs to S.C. Tribe.

The grievance of the petitioner is that no heed is being paid on the application of the petitioner for appointment under Dying in Harness on compassionate ground, due to which she has come on the verge of starvation.

No counter affidavit has been filed by the opposite parties.

Counsel for the petitioner has placed reliance on the judgment of this Court passed in Writ Petition no. 9 (ss) of 2002 reported in ***2005 (1) Uttaranchal Decisions page 379 Bhaguli Devi vs. State of Uttaranchal and others*** and on the judgment of this Court passed in ***Writ Petition No. 1412 (ss) of 2004 Smt, Nandi Devi vs. State of Uttaranchal and others.*** Relevant observations made in ***Smt. Nandi Devi V/s State of Uttaranchal and others 2005 (1) U.D.669,*** are quoted below:-

"It is not disputed that the petitioner's husband was working with the respondent on monthly salary basis since 1981 till his death i.e. 11.12.2001. It is also not disputed that the petitioner was given appointment under Dying-in-Harness Rules on the post of Beldar on daily-wage basis. This fact is also apparent from the appointment letter, which is annexed along with the writ petition. Contention of the petitioner is that since the petitioner was provided appointment under Dying-in-Harness Rules, her appointment cannot be treated similar to those appointed as daily-wage basis. The petitioner has placed reliance on the judgment of this Court in Writ Petition No. 91 (S/S) 2003

reported in 2005 (1) Uttaranchal Decisions Page 379 Bhaguli Devi Vs. State of Uttaranchal and others. She has further placed reliance on the judgment of Allahabad High Court in Civil Misc. Writ petition No. 39127 of 1994 Ravi Karan Singh Vs. State of U.P. and others reported in 1999 (3) U.P.L.E.B.C. Page 2263 wherein the division Bench has held that the appointment provided under Dying-in-Harness Rules shall be treated as permanent appointment and not a temporary appointment."

Learned Counsel has further referred Ravi Karan Singh Vs. State of U.P. and others [(1999) 3 UPLBEC2263], where the Division Bench of Allahabad High Court has observed as under:-

"According to the learned Single Judge, this Court had earlier held that an appointment under Dying in Harness Rules is a permanent appoint vide Budhi Sagar Dubey v. D.O.I.S. (1993) 1 UPLBEC 197; Gulab Yadav v. State of U.P. and others, (1991) 2 UPLBEC -995 and Dhirendra Pratap Singh v. D.I.O.S. &others, (1991) 1 UPLBEC 427. The learned Signle Judge who passed the referred order dated 19.12.1997 disagreed with the above mentioned decision and hence has referred the matter to a larger Bench.

2. In our opinion, an appointment under the Dying in Hanress Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on he sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary

appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) rules, 1975 will not apply to such appointments."

So far as the appointment under Dying in Harness is concerned, the Apex Court in the case of ***Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138*** has relied upon the judgment of ***Sushma Gosain v. Union of India (1989) 4 SCC 468.*** The relevant observations arte quoted below:-

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

"It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

So far as the judgment of the Apex Court in the case of ***Sushma Gosain Vs. Union of India and others (1989) 4 SCC 468*** is concerned, the relevant observations are quoted below:-

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

Looking to the grievance of the petitioner, liberty is given to the petitioner to file a fresh representation within a period of two weeks from the production of the certified copy of the order. If such a representation is filed, the same shall be disposed of within a period of two months thereafter looking to the grievance of the petitioner and in accordance with law.

Writ petition is disposed of. No order as of costs.

(Rajesh Tandon, J.)

27.03.2006
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